In the High Court of Punjab and Haryana High Court at Chandigarh.

Criminal Revision No.502 of 2007.

Date of decision 2.9.2008.

Ishaq and others.

...Petitioners.

Versus

State of Haryana.

...Respondent.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present; Mr. A.K. Singhal Advocate for the petitioners.

Mr. S.S.Goripuria, DAG Haryana.

...

K. C. Puri, J.

Judgment.

Under challenge in this Criminal Revision is the judgment dated 9.3.2001 passed by Shri Gurdial Singh Kotla, the then Additional Sessions Judge, Gurgaon whereby he dismissed the appeal preferred against the judgment/order dated 2.12.1999/3.12.1999.

The prosecution case, in brief, is that on 26.1.2006, a police party headed by Head Constable Sarup Singh and Constable Dharambir was present in front of Tehsil Compound, Nuh. Then, he received one written intimation, Exhibit PW5/A from Civil Hospital, Nuh regarding injured Mohammad Daud and Farukh sons of Rehman, which led to the recording of statement of Mohammad Daud, Exhibit PW1/A, after obtaining opinion of the doctor regarding his fitness. Mohammad Daud stated in his statement that he was R.M.P Doctor. Changa and Mehmooda sons of Ghisa started residing in his village Akera several years back and Changa was allotted a plot by his father who also helped Mehmooda to get a plot from Nathu in the village. Mehmooda went back to village Malai from village Akera and Changa started residing in village Akera. About 10/12 prior to his making statement, Changa demolished his 'Kacha' house in order to raise 'Pucca' construction at the same place and he brought building material. Accused Ishaq came there with a Lathi and asked him not to construct the house at that placing stating that he had got the land registered in his name. Farukh, his brother told that the land was given to Changa by his father and why he was being restrained from raising construction of the house. Ishaq told that earlier also, he had murdered a person and he went scot free and that he would

not permit construction of a house at tht time. People gathered there and made Ishaq to realise his mistake and Changa started construction of the house. 'Kacha' house of Mehmooda was given to Ishaq for residential purposes by his father, 17/18 years back during floods and now Ishaq wanted to take possession of that land stating that he had got land registered in his name from Nathu. House of Mehmooda was given to Ishaq during floods and the same was vacated after floods and the complainant had purchased the land from Nathu in which Mehmooda was residing and agreement, in this regard, was executed in the name of Subhani wife of Rehman Khan and Faiman wife of Jure kKan and,thus, there was ill-will between the parties over the plot of Mehmooda.

The complainant further alleged that on 26.1.1996 at about 9-00 AM, in the morning, Ishaq started putting stones in that land and when he was asked not to do so, he abused him and thereafter he became ready for fight. Ishaq was accompanied by Fakru, Illyas, Gaffar, Khalid, Bhagia, Yusuf. Khalid gave a Lathi blow on his head and Gaffar gave a Lathi blow on his left hand. Bhagia gave a Lathi blow on his back and Ishaq gave a Lathi blow on his right hand. Khalid gave a Lathi blow on the head of Farukh, his brother and Illyas gave a 'Farsa' blow from the back side on the left hand of Farukh. The accused also threw stones upon him and

his brother. Mohammad and Hanif had seen the entire occurrence and also rescued him and his brother.

On the basis of said statement, a criminal case was registered against the accused and after completion of investigation, challan was presented against the accused in the Court.

The prosecution, in support of its case, examined PW-1 Mohammad Daud complainant, PW-2 Farukh, PW-3 SI Ram Chander, PW-4 Gormal, PW-5 HC Sarup Singh, PW-6 HC Om Parkash, PW-7 Dr. D.S.Yadav, PW-8 HC Raj Pal Singh and PW-9 Dr. Pawan Singh.

After the close of prosecution evidence, the statements of the accused under Section 313 Cr.P.C were recorded. They denied the prosecution allegations.

After the conclusion of trial, the learned trial Court vide judgment/order dated 2.12.1999/3.12.1999, convicted and sentenced Ishaq, Yusuf and Bhagia to undergo simple imprisonment for two months under Section 148 IPC, simple imprisonment for two months under Section 323 read with Section 149 IPC and simple imprisonment for two months and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo further simple imprisonment for two months, under Section 325

read with Section 149 IPC while the remaining accused were sentenced to undergo simple imprisonment for one year under Section 148 IPC, simple imprisonment for six months under Section 323 read with Section 149 IPC and simple imprisonment for one year and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for two months under Section 325 read with Section 149 IPC.

Feeling dis-satisfied with the above-said punishment, the petitioners filed an appeal which was dismissed by Shri Gurdial Singh Kotla, the then learned Additional Sessions Judge, Gurgaon vide judgment dated 9.3.2001.

Hence, the present Criminal Revision.

The learned counsel for the petitioners has not challenged the conviction of the petitioners.

Both the Courts below have given cogent reasons in their elaborate judgments for convicting the petitioners and I find no reason to take a different view. Therefore, the conviction of the petitioners is confirmed.

The learned counsel for the petitioners has prayed for taking a lenient view in the matter of sentence.

I have considered the said submission.

Ishaq, Yusuf and Bhagia have been awarded simple

imprisonment for two months under each head under Sections 148, 323/149 and 325/149 IPC and a fine of Rs.2,000/- each under Section 325/149 IPC. They remained in custody for about 15 days after the judgment of learned Additional Sessions Judge, whereas accused Fakru, Illayas, Gaffar, Ishaq and Khalid have been sentenced to undergo simple imprisonment for one year under Sections 148 IPC, six months under Section 323 read with Section 149 IPC and one year under Section 325 read with Section 149 IPC and fine of Rs.2,000/- each under Section 325/149 IPC. They have undergone incarceration for a period of 2 months and 8 days after their conviction. These accused were allowed concession of bail in the year 2001. The occurrence relates to the year 1996 and since then the petitioners are undergoing the agony of protracted trial. After a period of seven years, it would not be in consonance with justice to send them to jail again. The Hon'ble Apex Court in authority in case **Baldev Singh and another v. State of Punjab,** AIR 1996 Supreme Court 372 reduced the sentence of the accused to already undergone for an offence punishable under Section 304, Part I, IPC but enhanced the fine to be paid as compensation. So, the ends of justice would be met in case the sentence of the accused is reduced to the one already undergone by them but the sentence of fine is enhanced to Rs.3,000/- per accused under

Section 325/149 IPC. Out of the said amount, Rs.10,000/- shall be paid to injured Mohammad Daud son of Rehman who received eight injuries and Rs.5,000/- to injured Farukh son of Rehman who received five injuries. In default of payment of aforesaid amount within three months from today, this Criminal Revision shall be deemed to have been dismissed.

With the aforesaid modification in the sentence, this Criminal Revision stands disposed of.

September 2,2008. (K. C. Puri)
Jaggi Judge